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Supreme Court, U.S.
FILED

071430 MAR 3 - 2008

OFFICE OF THE CLERK

No. (1)

IN THE

Supreme Court of the United States

Todd McClaskey, *et al.*

Petitioner,

v.

La Plata R-II School, *et al.*

Respondents,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit Court of Appeals

Pro se BRIEF IN SUPPORT OF PETITIONER FAMILY for want of legal representation

Todd McClaskey (Pro Se)
14925 State Hwy 3
La Plata, Missouri 63549
(660) 332-7797

QUESTIONS PRESENTED

Whether US Constitutional violations were established on court record, of Respondent practices against Petitioner family

and

Whether US Constitutional violations (Title VI) established by Court on court record(s) were entrenched by United States Courts in terminated appeals.

LIST OF PARTIES

Todd McClaskey, individually, *(for family; Karen and Sara McClaskey),*

Petitioners,

v.

La Plata R-II School District;
Michele Travis, individually and as School Board Treasurer 2002-2003; and William Thompson, individually and as School Board President for school year 2002-2003; and Carl Hagar, individually and as School Board Member for school board Member for school year 2002-2003; and Richard Burns individually and as School Board Member for school year 2002-2003; and Becky Furman, individually and as School Board Member for school year 2002-2003; and Randy L. Baker, individually and as School Board Member for school year 2002-2003; and Michael Kemmel, individually and as School Board Member for school year 2002-2003; and Richard Forcum, individually and as Superintendent of La Plata High School; and Steve Davis, individually and as Principal of La Plata High School; and

City of La Plata, Missouri, a Fourth Class City; and Ray Ivy, individually and as City Administrator form the City of La Plata; and Jim Woolfolk, individually and as Officer and as Defacto City Marshall for the City of La Plata, Missouri; and

United States of America, Department of Education; and United States Department of Education, Office of Civil Rights; Roderick R. Paige, individually and as Secretary of the U. S. Department of Education, Office

LIST OF PARTIES continued

of the Secretary; and Gerald Reynolds, individually and as Assistant Secretary Office for Civil Rights, U.S. Department of Education; and Angela M. Bennett, individually and as Director of Kansas City Enforcement Office for Civil Rights, U.S. Department of Education, Region VII; Mary Cohen, individually and as Regional Representative for Region VI of U.S. Department of Education; and Toney E. Swetnam, individually and as Acting Associate Director and Acting Assistant Secretary for Enforcement, Office for Civil rights, U. S. Department of Education; and John Doe, #1, individually and as Employee of U.S. Department of Education; and Gay Martin, individually and as Chief Investigator of Region VII of Office for Civil Rights, U. S. Department of Education; and Michael B. Hamilton, individually and as Associate Director, Region VI of Office for Civil Rights, U. S. Department of Education; and John Doe, #2, individually and as Employee of U.S. Department of Education;

Respondents,

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U. S. CONSTITUTIONAL PROVISIONS

This appeal involves Title VI Law; and USC§ Title 42 Sections 14141; and USC§ Title 18, sections 241, 242, and 245; and 42 USC§ 1981, 1983, 1985, 1986; and Federal Rules of Evidence and Disclosure and Freedom of Information. (and the Missouri Bill of Rights);

This appeal involves the Privileges and Immunities Clause of Article IV of the U.S. Constitution, which provides that "the Citizens of each State shall be entitled to all privileges and Immunities of Citizens in the several States."

TABLE OF AUTHORITIES continued

TITLE VI LAW of the Civil Rights Act of 1964, as amended (42 U.S.C. §§2000d to 2000d-7) prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. Title VI itself prohibits intentional discrimination. Funded agencies are prohibited from taking acts, including permitting actions that are intentionally discriminatory or have a discriminatory *effect* based on race, color, or national origin. Title VI discrimination complaints should be filed with the federal agency that provided the financial assistance. All Title VI administrative complaints are processed and investigated by OCR.

The Supreme Court recognized a private right of action under Section 601 of Title VI if a plaintiff proves intentional discrimination by a recipient of federal funds.

The District Court for this case stated February 25, 2005 in Memorandum and Order (page 5);

> ".... private individuals may sue recipients of federal financial assistance directly for intentional discrimination in violation of Title VI or the regulations applying it, and obtain injunctive relief and damages." (Alexander v. Sandoval, 532 US 275, 279-290 (2001) (citing Cannon v. University of Chicago, 441 US 677, 694 (19790. "

STATEMENT OF JURISDICTION

November 7, 2006, U.S. District Court Order and Decree

December 7, 2007, U.S. Eighth Circuit Court of Appeals; Opinion, offering provision for 14 day window for Petition for rehearing en banc

January 11, 2008, Eighth Circuit Court of Appeals; Mandate rejecting Petition for rehearing en banc

January 23, 2008, Eighth Circuit Court of Appeals; rejected postal tracking record evidence that Petitioner's Petition was actually on time for 14 days rehearing Petition

Pursuant to Supreme Court Rule 13, this Petition is filed timely within 90 days of the entry of final judgment. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257 (a).

CONSTITUIONAL VIOLATIONS established in fact

The **U.S. District Court for the Eastern District of Missouri** (2:03CV00066 AGF) provided conclusions by Court (herein) in two separate documented court records of significant Constitutional Law violations of Respondents against Petitioner family;

The District Court July 14, 2006 Memorandum, stated (page 12, center of page);

> "Lastly, the Court concludes that the School Defendants are not entitled to summary judgment.... for retaliation under the MHRA....The record supports a reading of the complaint as asserting that these Defendants' actions subsequent to Plaintiff's filing the discrimination charge with MCHR, were taken in **retaliation** for the filing of the charge".

Two weeks later, at court hearing, August 3, 2006, District Court spoke on the record to confirm violations of US Constitutional law had taken place against Petitioner's family at Defendant School, with local police, as a pattern of practice.

The Court at that hearing stated on the record, to Defense Attorney Margaret Hesse, who argued to the Court that Plaintiff had failed to report to Defendant School one last racial incident against Plaintiff before the family left Defendant community seeking a safer school at the end of that school year 2002-3, the Court said;

> "Mr. McClaskey does not have to continue to have dealings with the school board which he thinks will be un-redressed if his daughter isn't there anymore and if he feels like he can't go to the school and make himself heard.
> If his daughter continues to have problems then how can he have his daughter go to that school? Unless you can show me that he precluded that connection in his testimony I'm going to allow it".

Ms Hesse again argued to Court at Hearing with argument that Plaintiff family failed to report the latest racial incident to the school.

Judge again replied;

> "Well I understand but if you've tried for a year to get redress for racial complaints and you feel like you've been shut down every time and your daughter is facing the same thing and the last time you tried to discuss it with the school board they brought the police, I'm sorry but I see a connection here. So right now unless you submit something else that convinces me otherwise, the mere fact that she had another incident that they didn't report, I mean, that's like saying, well, I was getting harassed by somebody sexually and they harassed me about six times and I reported the matter six times and each time I got rebuffed; then they changed my job duties and started to make my life hell and so the next time I got sexually harassed, I left, because it was pretty clear nothing was going to be done to address my concerns.

> Now we call that termination, OK? ...And that termination relates to the feeling that you cannot get your complaints addressed. And the reason that your clients were denied Summary Judgment is; this man is attempting to redress concerns about racial assault leveled on his daughter, and the fact that it continues thereafter. And what they do is move; because they're convinced that it isn't going to do them any good to report it to the school board. They tried to do that for a year and were knocking their heads against the wall.
>
> That's what this lawsuit's all about. I understand it's not what Mr. McClaskey wants the whole lawsuit to be about; what I have determined is still a part of this lawsuit; that's what it's all about".

Norma V. Cantu, Assistant Secretary for Civil Rights, stated;

> "The regulations in 34 CFR 100.7(c) provide that OCR will investigate whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with title VI and the Department's implementing regulations. Racial harassment denies students the right to an education, free of discrimination", (March 7, 1994).

The court stated February 25, 2005 in Memorandum and Order (page 5);

> ".... private individuals may sue recipients of federal financial assistance directly for intentional discrimination in violation of Title VI or the regulations applying it, and obtain injunctive relief and damages." (Alexander v. Sandoval, 532 US 275, 279-290 (2001) (citing Cannon v. University of Chicago, 441 US 677, 694 (19790. "

REASONS FOR GRANTING THE WRIT;

I. No procedural protocol precludes Defendants and Courts from implementing benefits of local Defendant *regulations* governing race based hate crimes, when credible witness reports should necessarily invoke proper protocol for investigations, for reporting crimes, and addressing retaliations against any person who report race based discriminations and assault. In fact those rules and regulations may implement the discerning process of allegations of violations.

II. *No laws* preclude United States Courts from implementing the benefits of Title VI Law where the court record concludes such violations have occurred against Petitioner family,

III. and no *procedural regulations* preclude courts granting due process Appeals when those appeals address Court Record of violations of Title VI Law.

STATEMENT OF THE CASE

This case is about "the wall" described by Court above, describing denial strategies to deny the benefits of basic U.S. Constitution, denial by "terminations" and "retaliations" by Defendant School, City, and OCR. This case is about those government sponsored personnel who provided a cover of "legitimacy" for Defendant School to practice "the wall" with other Defendants of this case providing all manner of "terminations" for one school year against Petitioner family attempting redress and complaint filing, namely from Defendant City law enforcement, and Defendant Department of Education, OCR. Defendant terminations collectively, were reinforced by United States Courts terminations and disposal processes, an entrenchment problem of Title VI Law.

The latest example of "the wall" is the treatment of appeals as reflected in the District and Circuit Court docketing of appeals. The following court docket of Petitioner appeals reflects attrition of appeals to fit a pre-judged formula for disposal of all appeals by a strategy of Court to treat Plaintiff's last appeal, as the "notice" of appeals, and then dispose of that last one by deception;

Case No 2:03CV00066 AGF
Case No. 05-2303
Case No. 06-3049
Case No. 06-3444
Case No. 06-4100

The Courts have reduced their jurisdictions of Petitioner appeals to limit all appeals to one appeal and subject; the "settlement agreement" (as a Contract) appealed.

Courts acknowledged in the November 7, 2006 Decree and the December 7, 2007 Opinion that Defendant School violated the "settlement" deadline for closing contract in negotiations, but Courts declared the "settlement" was "binding", as a final disposal.

Plaintiff declared his signature "null and void" to contract processes when it was learned that the contract for settlement, understood to have been closed, had been violated with premeditated "tricks" practiced before, during, and after closing by Defense to implement alterations to violate closed contract after the fact.

Petitioner contends that Respondent treatment of a page number omission as a premeditated act of deception provided "closure" for Respondents and the Courts, serving to deny closure to Petitioner's family (as a contracted "agreement"), thereby entrenching Title VI practices of Defendants pattern of violating "rules" with the same pattern of practice that gave rise to this lawsuit. The denied closure to plaintiff family was the result of a pre-meditated design by Defense to alter contract indiscernible until two weeks after the closure date when Defense submitted their altered contract.

The Courts have disposed all appeals of Constitution issues which gave rise to this case at the same time Petitioner was attempting appeals redress of the disposal of Constitutional violations. That District

Court's final Decree, November 7, 2006 was the culmination of the disposal process by Court of all Plaintiff appeals until the Court had run its course of disposal processes, and terminations of all appeals, to arrive at the last objective of the Court, and the subject of the last appeal; the "mediation for settlement". With that court disposal objective, and the Circuit Court's limited jurisdiction, Petitioner will address what both Courts limited appeals to; "settlement agreement".

ANALYSIS OF THE SETTLEMENT as a "CONTRACT"

In negotiations for "settlement agreements" September 14, 2006, the mediator, Dr. Tokarz, interjected to parties that there was a 5:00 pm deadline for parties to sign the contract.

Dr. Tokarz verbally established a 5:00 pm deadline to processes of signing contract, if parties so acted to sign acceptance on September 14, 2006. Petitioner asked for an extension of that time. Dr. Tokarz reiterated the process had a deadline for closing, 5:00 pm, on that date. Defense and the three Defendants made no objection to that exchange. At no time was there any discussion by Defense to take that process to apply signatures beyond that deadline. There was no other exchange or argument by Defense, by Defendant representatives, or any parties to modify what Dr. Tokarz interjected as deadline to signatures for contracting closure.
Before day's end parties were provided by Defense with two unsigned copies for the signing ceremonies.

If Dr. Tokarz' proposal was accepted, all non-attending parties were bound by their Representative's "agreement" if signed in that fashion, and all would gain there benefit to the "agreement" by their names affixed to the contract, rather than by their signatures, as is the normal (tradition). No other provision was made or discussed for acting out closing in any other fashion but for Dr. Tokarz' closing deadline terms. Three Defendants and Plaintiff signed. Parties took their identical copies home.

Evidence supports School Defense acted with premeditated intent to alter the unsigned copies presented for closing ceremonies by deleting the page number on the last and fourth page of those two copies of the unsigned contract. Parties executed that contract in accord with the deadline and there were only four pages to the actual closed contract, not six, when closed on that date. But Defense pre-plan deletion of the number "4" served to avoid drawing attention to multiple copies, two weeks later, of that fourth page, with the number "4" showing up over and over on page five and six of the executed Defense copies. Defense strategy was to delete that number before closing, and then add signatures after the negotiated date September 14, 2006, and 5:00 pm deadline for closing. The Defense pre-planned deletion of that page number facilitated Defense obtaining the two signatures of Defendant Administrators who did not attend negotiations. That pre-meditated practice served to provide Defense an opportunity to photocopy the fourth page of the closed contract, making that closed page available to certain Defendant Administrators to sign well after closing "agreement". Parties who signed to

close at 5:00 pm on that September 14, 2006, signed a negotiated "agreement" for closing "issues that gave rise to these Actions".

Plaintiff next action was to mail a letter to Defendant acting Superintendent, Tom Ward (not a Defendant in this case). Plaintiff asked the Superintendent in the letter to protect the "agreement" by following Dr. Tokarz "rules" for closure, and to make sure no additional signatures were added to effect "legitimacy" of process. No one responded to that letter dated September 16, 2006. At special Board meeting the Defendants are purported to have discussed Plaintiff letter.

At the end of two weeks Defense presented the altered version of the closed contract which obtained additional signatures on closed contract. The #4 page, a closed contract, had been replicated several times, photocopied with signatures of Defendant Administrators Richard Forcum and Steve Davis, the page which had the #4 deleted. By so manipulating that last page, Defense misrepresented that page by photocopy in order to circumvent closing terms by Defendants who signed in "agreement", thereby that process violated those who signed properly on the closing date, with Dr. Tokarz "rules". That last page presented itself three times reproduced, and indicated that the two School Defendant administrator's signatures were represented by deception of facsimile, for the sole purpose of creating a representation which appeared "fully executed" to processes that would not attract attention after the fact of closing, by multiple #4's, a practice which was not based on closing terms, but based on the will to disregard the "agreements" that took place creating the

impression in negotiations that the 5:00 pm deadline was mutually applicable.

Those alterations violated the "rule" for closing at a fixed time and date, a negotiated condition the Defendants and the Court say has no importance to what was contracted, which violated the part of the contract which stated;

> "...parties desire to resolve all matters arising out of or related to Mr. McClskey's claims against the School Defendants, including but not limited to, the incidents that gave rise to the above-referenced causes of action;"

Defendant failures to follow their "rules" when race violations were reported are what gave rise to these litigations.

Additional flaw in the contract was failure of the case legal description to be affixed to the contract. It references a case that does not exist referring to;

> "an action in the United States District Court for the ***Eastern District of Illinois"***

The case is in Missouri.

Notwithstanding that mistake the number of breaches of Defendants indicates a degree of negotiation that was disingenuous to "agreements";
Clauses 1, 2, 5, 6, 12, and 16 of the contract are breached, which includes all monies to Plaintiffs family

or to the United Methodist Church. Defendant School auditor advised the Board to provide contracted money.

Petitioner Appealed to the Court that there were significant violations to that contract after the fact, resulting in Plaintiff declaring his signature to that contract as "null and void". That declaration of Plaintiff resulted in a Hearing November 3, and Decree November 7, 2006. Plaintiff's last appeal was to the Circuit Court of Appeals, November 24, 2006. Circuit Court's Opinion came 13 months later in a one page Opinion, December 7, 2007. Plaintiff was offered 14 days from that date to file a Petition for "rehearing en banc". The Postal Record indicates Petitioner met that deadline with Court receipt at 11:35 on December 21, 2007. That Court terminated that Petition by rejecting it as "untimely", thereby practicing to procedurally terminate all Appeals and Petition and thereby entrench significant Constitutional law violations (Title VI) of Defendants, known by the lower Court, but unrecognizable to the Circuit Court by "virtue" of fact that Court effectively reduced all plaintiff appeals, and all history of the case, and provided themselves blinders to the essentials of the case, reinforcing the "binding" decision of the "settlement agreement" by the District Court, thereby entrenching Constitutional violations of Defendant's history and practices and the contract. Defendant's history included practicing "retaliations" and "terminations" of "redress" to multiple race based hate crime events at Defendant, and with police. That history was not resolved by "settlement".

No Plaintiff appeals before "settlement agreement" were given redress by Courts. The only appeal that was given redress by Courts was Plaintiff's last appeal, dated November 24, 2006, which provided Courts after the mediation failure the ability to rename that appeal as a "notice", which is deception of processes of appeals.

Where there was one standard for closure deadline applying equally to parties during negotiations, there were two standards for closing created after closure on September 14, 2006. The United States Courts have declared that double standard as "binding", and even imposed a monetary fine against Petitioner for filing a Motion of Complaint and declaring his signature "null and void" to those practices.

OTHER CONTRACT FRAUDS APPEALED;

Defendant School liability insurance contract Extension Endorsement highlights Plaintiff's family disadvantage in legal representation, establishing two distinct Jim Crow standards after Plaintiff attorney was burned out of his practice three weeks after Plaintiff filed Complaint with these Courts; one for School Defense and unlawful use of $100, 000.00 of money from the fraudulent liability insurance contract between Defendant School and the ***Great American Insurance Company,*** which reads on page 1 of 3;

> "Costs of Defense must arise out of Insured's performance of school-related activities for the Named Insured and be sustained in the defense of a Claim arising out of an Insured's performance of school-related duties for the Named Insured:

(a) Alleging dishonest, fraudulent, or criminal acts of the Insured; except that such coverage shall cease immediately for any insured against whom such dishonest, fraudulent, or criminal acts are established in fact;

(f) arising out of or in connection with alleged discrimination against students because of race ....other than Claims brought by a government agency."

The very instant when Defendant Superintendent rejected Conciliation terms of MCHR and Right-to-Sue protocol was issued, it was at that moment of investigations, according to that contract and state investigation conclusion, when the school refused to correct records and provide a letter of apology to Sara McCaskey, that it was established in the liability contract that Defendant liability contractor would not pay for attorney fees. That contract is fraud because it purports to provide liability insurance for insured, the insured pays public funds for a policy believing it has insurance, the policy in fact should not have provided funds for legal representations at the moment litigations commenced, but the Defense team used that money anyway to entrench Title VI Violations which were established in fact" by State Investigations. That becomes violation to Plaintiff family by courts refusing due process appeals of known law violations of fraud which effect litigations, thereby entrenching known Title VI violations with legal representation inequity.

ARGUMENT

In *Brown v Topeka Board of Education (1954)*, Citing Chief Justice Earl Warren;

> "We conclude that in public education the doctrine of separate but equal has no place"

This case is one Court away from repeating *Plessey v Fergusson*, (1896), and the *Dred Scott Case* (1857) and the circumstances of denial that created the dark side of judicial history of the United States with J. Edgar Hoover denials leading to the *Sumner County, Mississippi acquittals* (1955).

In 1865 Congress rejected the proposal to commission a bust of Justice Roger B. Taney to be displayed with those of the four Chief Justices who preceded him. As Senator Charles Sumner of Massachusetts said;

> "I speak what cannot be denied when I declare that the opinion of the Chief Justice in the case of Dred Scott was more thoroughly abominable than anything of the kind in the history of courts. Judicial baseness reached its lowest point on that occasion. You have not forgotten that terrible decision where a most unrighteous judgment was sustained by a falsification of history. Of course, the Constitution of the United States and every principle of Liberty were falsified, but historical truth was falsified also. . . . "

If it appears this family is not in that historical league with these figures of history, or if it seems like Petitioner is dramatizing, it is to be reminded that the assault which took place on August 26, 2002 at Defendant School, was preceded by witness to race based death threat, according to police witness report, evidence disclosed to pre-trial, and rejected by Court.

And while that Defendant Principal refused any witness reports that had to do with race violations to that incident, another repeat incident occurred on September 23, and was document by the Principal, at the same time the Defendant Superintendent was shredding Petitioner's appeal with accusations that this family failed to follow "proper protocol" by going to the Principal first before going to the Board. No redress for that school year was acknowledged without Defendant discrediting the family.

And those issues at Defendant with Plaintiff daughter were preceded by a noose being thrown around Plaintiff's son's neck at that same school when he was a new student the first week attending that school. Court threw out that evidence in the August 3, 2006 hearing, along with the School Regulations and Student Handbook, and a teacher's written witness statement.

That Court Conclusion establishes, from "reading" the "record" of the evidence, clear government sponsored violation of Title VI Law took place against Plaintiff family by School and police over school year 2002-2003. The Question is whether Title VI Law was ever available to Plaintiff family when the evidence supporting this family's Original Complaint about

violations at Defendant School and with local law enforcement (Defendants City) (and with flip flopping investigations of OCR) were providing appearances of "propriety of law" while actually they provided unlawful cover-up strategies employing all manner of practices described as "the wall" by Court at Hearing on August 3, 2006.

Procedural terminations by all government entities of these Complaints, to usurp local Defendant Regulations and at the same time usurp State and Federal Constitution is what this case is all about. Plaintiff Notice of Appeals, dated July 20, 2006, was addressed to Courts out of alarm for Summary Judgment to Defendant City, and the removal of Defendant Ray Ivy as a court attrition of evidence of "pattern of practices" of the City.

That Court's conclusion was limited to its pre-judgment/pre-trial formula for disposing of Complaints, not on the basis of evidence, but on a judicial formula in place before Plaintiff case was filed October 13, 2003. That formula translates; "the United States cannot be sued" and "police cannot be sued". Therein the Court has disposed of evidence to this case with judicial impunity that seem to side step Constitution benefits and Federal Rules of Evidence.

RELIEF SAUGHT

> ".... private individuals may sue recipients of federal financial assistance directly for intentional discrimination in violation of Title VI or the regulations applying it, and obtain

> injunctive relief and damages." (Alexander v. Sandoval, 532 US 275, 279-290 (2001) (citing Cannon v. University of Chicago, 441 US 677, 694 (19790. "

Petitioner seeks relief as provided in U. S. Constitutional Title VI Law and stated in the Original and First Amended Complaints and the Second and Third Amended Complaints to the extent that those Complaints are read as Court Appointed Representation working with the Court to eliminate U.S. Constitutional benefits of law to Plaintiff family in pre-trial. Petitioner family seeks nothing more than what is granted in the face value of those laws, State and Federal.

Authority has Concluded Constitutional Laws have been violated against Petitioners. The Complaint represented by the Eighth Circuit Court of Appeals, December 7, 2007 Opinion provided in Appeals the roster from the Original and First Amended Complaints.

CONCLUSION

Because the ruling of United States Courts in Appeals entrenches Title VI Law violations established by Court on the record against Petitioner family and Court Decree and Opinions conflicts with relevant decisions of this Court interpreting the Privileges and Immunities Clause, and Title VI Law, *certiorari* should be granted.

Respectfully Submitted,

Todd McClaskey

CERTIFICATE OF SERVICE

Undersigned certifies that a copy of the foregoing was served via first class mail this 3 day of March, 2008

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District Court
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Appellate Opinion; December 7, 2007.....App. 2-5

District Court Memorandum and Order...App. 6-27

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

TODD McCLASKEY,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
	)	Case No 2:03CV000066 AGF
LA PLATA R-II SCHOOL DISTRICT, et al.,	)	
	)	
	)	

Defendants.

JUDGMENT

Pursuant to the Memorandum and Order issued herein on this day, all claims against all parties have been resolved in favor of Defendants and against Plaintiff.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered against Plaintiff in this action.

_____
AUDREY G. FLEISSIG
UNITED STATES MIGISTRATE JUDGE

Dated this 7th day of November, 2006

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-4100

Todd McClaskey, Individually	*	
	*	
Appellant,	*	
and	*	
Karen McClaskey, individually; S.M., individually by her next friend Todd McClaskey.	*	
	*	
Plaintiff s,	*	
	*	
v.	*	Appeal from the United
	*	States District Court for the
	*	Eastern District of Missouri.
	*	
	*	(UNPUBLISHED)

La Plata R-II School District; Michele Travis, individually and as School Board President for the school year 2003-2004 and as teasurer for the year 2002-2003; William Thompson, individually and as School Board President for school year 2002-2003; Carl Hagar, individually and as School Board Member for school board Member for school year 2002-2003 and 2003-2004; Richard Burns individually and as School Board Member for school year 2002-2003 and 2003-2004; Becky Furman, individually and as School Board Member for school year 2002-2003 and 2003-2004; Randy L. Baker, individually and as School Board Member for school year 2002-2003 and 2003-2004; Michael Kemmel, individually and as School Board Member for school year 2002-2003 and 2003-2004;

Richard Forcum, individually and as Superintendent of La Plata R-II School District; Steve Davis, individually and as Principal of La Plata High School;

City of La Plata, Missouri, a Fourth Class City; Ray Ivy, individually and as City Administrator for the City of La Plata; Jim Woolfolk, individually and as Officer and as Defacto City Marshall for the City of La Plata, Missouri;

United States of America, Department of Education; United States Department of Education, Office of Civil Rights; Roderick R. Paige, individually and as Secretary of the U. S. Department of Education, Office of the Secretary; Gerald Reynolds, individually and as Assistant Secretary Office for Civil Rights, U.S. Department of Education; Angela M. Bennett, individually and as Director of Kansas City Enforcement Office, Office for Civil Rights, U.S. Department of Education, Region VII; Mary Cohen, individually and as Regional Representative for Region VII of U.S. Department of Education; Toney E. Swetnam, individually and as Acting Associate Director and Acting Deputy Assistant Secretary for Enforcement, Office for Civil Rights, U. S. Department of Education; and John Doe, #1, individually and as Employee of U.S. Department of Education; Gay Martin, individually and as Chief Investigator of Region VII of Office for Civil Rights, U. S. Department of Education; Michael B. Hamilton, individually and as Associate Director, Region VI of Office for Civil Rights, U. S. Department of Education; John Doe, #2, individually and as Employee of Office for Civil Rights,U.S. Department of Education;

Appellees,

Becky bunch, individually and as Treasurer of the

School for School year 2003-2004,
Defendant.

Submitted: November 26, 2007
Filed: December 7, 2007

Before WOOLMAN, COLLOTON, and BENTON, Circuit Judges.

PER CURIAM.

Todd McClaskey appeals the District court's November 7, 2006 order granting a motion to enforce a settlement agreement and dismissing with prejudice his claims against the La Plata R-II School District, its School Board, and certain school board members and school administrators (School Defendants) arising out of his allegations that his constitutional rights were violated when he attempted to speak out at school board meetings regarding alleged racial harassment of his daughter at school. In prior orders, the district court had disposed of McClaskey's claims against the United States Department of Education and various federal officers (Federal Defendants), and the City of La Plata and one of its police officers (City Defendants).

We note that McClaskey's notice of appeal specifically designated only the district court's November 7 order enforcing the settlement agreement and dismissing the claims against the School Defendants, and we therefore conclude that we lack

jurisdiction to review the district court's prior orders. See Fed. R. App. P. 3(c)(1)(B);Bordella v. Delo, 972 F.2d 204, 207-08 (8th Cir. 1992). Accordingly, we dismiss from this appeal all of the Federal Defendants and the City Defendants to the extent they have continued to participate in the litigation.

The settlement agreement at issue was negotiated by McClaskey and several of the School Defendants with the assistance of a court-appointed mediator, and it was reduced to writing and signed by McClaskey and all of the School Defendants. The district court determined that a binding settlement agreement existed between McClaskey and all of the School Defendants, notwithstanding the fact that some of the School Defendants signed agreement after the mediation deadline had expired. Upon review, we conclude that the district court's determination was not clearly erroneous. See Changanti & Assocs. v. Nowotny, 470 F.3d 1215, 1221 (8th Cir. 2006) (clear error standard of review; setting forth essential elements of valid settlement agreements under Missouri law), cert. denied, 127 S. Ct. 2977 (2007). Accordingly, the district court's November 7 order is affirmed, the judgment is affirmed, and all pending motions are denied.

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1 The Honorable Audrey G. Flessig, United States Magistrate Judge for the Eastern District of Missouri, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636 (c).

UNITED STATES DISTRIC COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

TODD McCLASKEY,
Plaintiff

Vs.

LA PLATA R-II SCHOOL DISTRICT, et al,
Defendants.

MEMORANDUM AND ORDER

This matter is before the Court[1] on the motion of Defendants LaPlata R-II School District (the "School District"), Michelle Travis, William Thompson, Carl Hagar, Richard Burns, Becky Furman, Randy L. Baker, Michael Kimmel, Richard Forcum, and Steve Davis (collectively, the "School Defendants") to enforce a settlement agreement signed by Plaintiff Todd McClaskey, who appears in this case pro se. An evidentiary hearing was held on November 3, 2006, at which the School Defendants were represented by counsel and Mr. McClaskey appeared pro se. The Court heard argument and received documents from the parties. The School Defendants presented the testimony of Tom Ward, the current Superintendent of the School District and of Mr. McClaskey. Mr. McClaskey also testified on his own behalf. For the

[1]The parties consented to the exercise of jurisdiction by the undersigned United States Magistrate Judge under 28 U.S.C. 636(c).

reasons set forth below, the Court will grant Defendants' motion.

BACKGROUND

This action commenced on October 13, 2003, by Plaintiff, his wife, Karen McClaskey, and their then minor daughter, Sara McClaskey, who was a student at the LaPlata, Missouri, high school. The complaint alleged that the daughter was discriminated against at school as a bi-racial individual and that Plaintiffs' attempts to seek redress were prevented by members of the School Board, the School District, and a La Plata police officer and city administrator. Plaintiffs further alleged that the Office of Civil Rights (CR) of the United States Department of Education (DOE) refused their request for administrative review of the matter. Plaintiffs sought actual and punitive damages and injunctive relief against the School District, several employees of the School District, members of the School Board, the City of La Plata, a La Plata police officer and municipal official, the OCR, the DOE, the Secretary of the DOE, and several other DOE and OCR officials.

Plaintiff's wife and daughter eventually withdrew from the lawsuit and the Court determined that all Defendants except the School Defendants were entitled to judgment in their favor. The remaining School Defendants are the La Plata R-II School District; Richard Forcum, the former Superintendent of the District; Steve Davis, the former Principal of the District's high school; and seven (7) present and/or past members of the District's Board of Education, Michele Travis, William Thompson, Carl Hagar, Richard Burns, Becky Furman, Randy L. Baker, and Michael Kimmel.

Facts preceding the Second Mediation

On Thursday, August 3, 2006, the Court held a final pretrial conference in the case, which was scheduled to proceed to trial on August 7, 2006, in the Northern Division. At the start of the pretrial conference, based on the parties' representations that such discussion might prove useful, the Court afforded the parties some time to conduct settlement discussions. Although no agreement was reached at that time, the parties represented that it had been a useful discussion, and the final pretrial conference was held.

The following day, on August 4, 2006, the Court was contacted and advised that the parties wished to continue their settlement discussions. Consistent with this advice, the School Defendants filed a written motion, with Plaintiff's consent, requesting that the trial be continued to permit the parties to conduct further settlement discussions. [Doc. #223]. The motion stated that following the pretrial conference the parties had conducted "a lengthy (two hour) conversation wherein they discussed settlement possibilities." It recited the parties' agreement that further settlement discussions would be fruitful and their belief that a continuance of the trial would be in the interest of justice. It further stated that because the School District was a public body, it could not meet to discuss settlement without providing seven-days' written notice to the public of its meeting. The motion stated that counsel for the School Defendants had reviewed the motion with Plaintiff , and that he was in agreement with the motion and had no objection to it.

Based on the parties' representation that they had a good faith belief that it would be productive to

continue the case solely for the purposes of settlement, the Court continued the trial to October 10, 2006. [Doc. #226]. Plaintiff and the School Defendants were directed to use the time originally scheduled for trial to meet in good faith and attempt to reach an agreement as to the general terms of a settlement by Friday, August 11, 2006, "with the understanding that any such agreement shall be subject to board approval." The parties were further directed to file a notice advising the Court of the status of their negotiations by August 18, 2006, and to attempt to consummate any proposed settlement by September 18, 2006.

On August 11, 2006, the Court held a hearing on Plaintiff's unrelated motion to reconsider the summary judgment entered in favor of two other Defendants, La Plata police officer Jim Woolfolk and the City of La Plata. Plaintiff and counsel for the School Defendants were present at the hearing, and confirmed to the Court, off the record, that they were continuing to have settlement discussions and had discussed perhaps conducting a second mediation. In furtherance of their settlement discussions, counsel for the School Defendants gave Plaintiff a draft of a proposed settlement agreement for his review.

Over the course of the next few weeks, the parties continued their settlement discussions. The parties represented that they thought it might be productive to send the case to mediation a second time, but Plaintiff indicated that he did not want to pay for another mediator. The parties thereafter agreed to have Professor Karen Tokarz, who agreed to waiver Plaintiff's share of her fee, serve as the mediator.

On September 6, 2006, the Court held a conference call with Plaintiff and counsel for the School

Defendants. The parties confirmed that they had had numerous conversations since the August 11 hearing, but had not yet been able to schedule a mediation with Professor Tokarz. Though Plaintiff expressed dissatisfaction with the Court's prior orders dismissing Defendants other than the School Defendants, Plaintiff confirmed to the Court his willingness to pursue a mediation with the School Defendants. The Court specifically reminded Plaintiff that the mediation would be with the School Defendants only, and would not involve any claims he believed he had regarding the police, the City of La Plata, or any Defendants other than the School Defendants. The Court further directed Plaintiff that he should not go forward with the mediation if he did not believe he could, in good faith, attempt to negotiate a separate settlement with the School Defendants only. Plaintiff stated that he understood and confirmed his willingness to mediate, in good faith, his claims against the School Defendants.

On September 7, 2006, Margaret Hesse, counsel for the School Defendants, and Plaintiff exchanged emails confirming that the mediation was scheduled with Professor Tokarz for Thursday, September 14, 2006, and noting that Professor Tokarz was requesting the parties' mediation statement by Monday. In an email requesting that the time be changed to 10:00 a.m., to permit her clients to travel to St. Louis that morning, Ms. Hesse advised Plaintiff, "Tom Ward, the current superintendent, Becky Furman, Bill Thompson and Richard Burns plan to attend the mediation for the school defendants. Also will you let me know if Karen and Sara plan to attend so that I can have enough chairs, refreshments, etc., available?" Def. Ex. 5.

The Mediation Conference and Settlement Agreement

The mediation conference was held on September 14, 2006, beginning at 10:00 a.m., at the offices of counsel for the School Defendants. In attendance were Tom Ward, Becky Furman, Bill Thompson, and Richard Burns, on behalf of the School Defendants; their attorneys Ms. Hesse and Mrs. Cole; Plaintiff Todd McClaskey; and Professor Karen Tokarz and one of her students, who was observing. Plaintiff did not have his daughter or his wife attend.

At the start of the conference, Professor Tokarz presented the parties with a Mediation Confidentiality Agreement, which Plaintiff reviewed and signed, as did the School Defendants' representatives. Def. Ex. 1. In the agreement, the parties and their counsel agreed to negotiate in good faith. Professor Tokarz at some point set a 5:00 p.m. deadline for the parties to reach an agreement. This was done, at least in part, because Mrs. Hesse advised the parties that she would have to leave at 5:00 p.m. to attend a board meeting. Apparently, Mr. Ward felt, because it would be a long day, that any agreement should be reached by 5:00 p.m.

The parties negotiated in good faith for seven hours, from 10:00 a.m. to 5:00 p.m., including over the lunch hour, having lunch brought in. By 5:00 p.m., Plaintiff and the School Defendants reached an agreement, which was reduced to writing (the "Settlement Agreement"). Def. Ex. 2. The final agreement reached was similar to the proposed agreement that Ms. Hesse had given to Plaintiff on August 11, 2006, and the Settlement Agreement accurately reflects the terms of the agreement the parties reached.

The Settlement Agreement provides, in part, that the School Defendants would issue letters to Mr. McClaskey setting forth their reflections on the incidents that gave rise to the lawsuit, and discussing the changes the District had made or will make as a result of the McClaskeys' attempts to bring to light certain issues with the District. In addition, the District agreed to do the following: (a) conduct conflict resolution workshops with 4th grade students during the school year, particularly related to harassment and bullying, which workshops Sara McClaskey could attend and participate in, and conduct annual workshops with upper-grade students and in-service and training of all staff; (b) make a statement at the beginning of each open meeting of the Board stating the purpose of the comment portion of the meeting, and advising of the procedures to be placed on the agenda, which statement would also be printed on Board agendas; (c) maintain its Board policies on a website for public inspection at no charge; (d) make $1,000 available to the McClaskey family for counseling and/or other professional services (e) pay to the McClaskey family $30,000 to be used for educational and travel purposes, with payments to be made in two installments of $15,000 each, on November 1, 2006, and January 10, 2007; (f) provide Mr. McClaskey with a letter of recommendation and respond to inquiries from prospective employers in a particular manner, described more fully in the agreement. Plaintiff, for his part, agreed not to make any further claims against the School Defendants, and upon execution of the Settlement Agreement to file with the Court a Voluntary Dismissal with prejudice of the School Defendants. The Settlement Agreement further

provides, "Mr. McClaskey acknowledges that they have voluntarily entered into this Agreement of their own free will based only upon the terms and conditions included in the Agreement."

At or near 5:00 p.m., the Settlement Agreement was signed by all of the parties present: Tom Ward, Becky Furman, Bill Thompson, and Plaintiff. The Settlement Agreement also contained signature lines for the School Board and the School Defendants who were not present at the mediation, listing each by name and providing lines for their signatures and the dates of their signatures. Ms. Hesse advised Plaintiff that she would have the others sign the Settlement Agreement and send it to him. At the hearing, both Mr. Ward and Plaintiff acknowledged that it had been a long day and that everyone was tired by the end of the day.

The mediator, Prof. Tokarz, thereafter filed an ADR Compliance Report, acknowledging that the ADR conference had been held on September 14, 2006; "All required individuals, parties, counsel of record, corporate representatives, and/or claims professionals attended and participated in the ADR conference in good faith, and each possessed the requisite settlement authority"; and that the parties did achieve a settlement. [Doc. #257].

Following the mediation conference, Ms. Hesse contacted Defendants Forcum and Davis to obtain their signatures, and Tom Ward contacted the remaining individual School Defendants and advised them of the agreement that had been reached. The School Defendants then began to take the steps necessary to implement the Settlement Agreement. Pursuant to the terms of the agreement, the current school board and the prior school board each drafted the letters required,

the District drafted the letter of recommendation, and the District began to process the paperwork necessary for the first installment of the $30,000 payment. They also scheduled a School Board meeting to approve the Settlement Agreement in closed session.

On September 16, 2006, Plaintiff sent a letter to Tom Ward, Superintendent, referencing "Settlement Agreement September 14." Def. Ex. 3 (filed as Doc. #252-1). In the first paragraph, Plaintiff stated, "To matters of the meeting Thursday and the document #5, please send, in my name, the $1,000 designated for "counseling" to the youth program at the Kirksville United Methodist Church." With regard to the payments referenced in P6, Plaintiff stated, "please do not send us any money in November and January. We will get by just fine." He also stated that he did not need the letter of recommendation referenced in P7. He further stated, "The rest of the agreement numbers reflects what the Court and Defense team set out to get from the meeting." In the last substantive paragraph of the letter Plaintiff stated:

> As for the signatures on the document, as of 5:00 PM on September 14, according to the deadline set by Dr. Tokarz, I think those signatures reflect accurately those who were participants in the meeting as of that signing date and time. Any additional signatures will make that representation illegitimate and make it appear that Richard Forcum and Steve Davis (and the rest of the blankety-blanks) were conscientious participants, and they were not. And additional signatures will make it appear there was closer to a quorum of Defendants, and there were not.

He closed by stating, "If there is anything else I can do for the school please let me know." Id.

Mr. Ward received Plaintiff's September 16 letter, which he read as a reaffirmation of the settlement reached, on Monday, September 18, 2006. On September 20, 2006, at 12:00 p.m., the current members of the District's Board of Education met in closed session. Mr. Ward distributed a copy of Plaintiff's September 16 letter to the members. They, too, read the letter as affirming the fact of the settlement, and the Board formally approved the Settlement Agreement. There was no discussion of the paragraph of the letter pertaining to signatures. Defendants Becky Bunch and Michael Kimmel signed the Settlement Agreement at the meeting, and Becky Furman signed again in her capacity as president of the Board of Education. Randy Baker signed on September 19, 2006, and the remaining individual School Defendants signed between September 21 – 26, 2006. The date on which each School Defendant executed the Settlement Agreement is reflected on the document. Def. Ex. 2.

On October 2, 2006, Ms. Hesse sent a letter to Plaintiff by overnight carrier, enclosing a copy of the fully executed Settlement Agreement and advising him that it had been approved by the Board. She also enclosed a voluntary dismissal memorandum, which she stated Plaintiff would need to file with the court, together with the letters from the former and current Boards of Education and the letter of recommendation, referenced in the Settlement Agreement. Def. Ex. 6.

In the meantime, having heard nothing from the parties, the Court issued an Order on September 28, 2006, directing that the parities advise the Court on the status of the mediation by Friday, October 6, 2006. On

October 5, 2006 the School Defendants filed a memorandum advising that a settlement had been reached, the Settlement Agreement had been fully executed, and that Plaintiff had a copy of the voluntary dismissal that the School Defendants understood Plaintiff would be filing in the near future. [Doc. #250].

On December 6, 2006, the Court received a memorandum from Plaintiff, purporting to declare null and void his signature on the Settlement Agreement. [Doc. #252]. The caption on the pleading reads:

> Plaintiff (Pro Se) hereby declares Null and Void the signature of Plaintiff on the September 14, 2006 Settlement Agreement Release document, as a result of violation of the Rules of Engagement as set forth by Dr. Tokarz for signing and legitimizing that document. The addition of signatures does not represent what went in to both the making of that document or who was represented at that meeting when rules of engagement determined the end of the signing processes.

As exhibits to his filing, Plaintiff attached a copy of his September 16,2006 letter to Mr. Ward, and a copy of the Settlement Agreement, with two handwritten notations. The handwritten notations assert that the portion that contains the original four signatures on September 14, 2006, is "the legitimate original...and meets the Rules of engagement of Dr. Tokarz," and the portion that contains the signatures thereafter "does not represent the September 14 set of signatures and original Agreement according to Dr. Tokarz rules of engagement." In his memorandum, Plaintiff also discusses the fact that his claims against the other parties have been denied and states that his "failure to

be able to address these entities have effected the September 14 Mediations and to matters of Trial." [Doc. #252].

On October 6, 2006, the School Defendants filed a second memorandum to the Court, stating that after filing the October 5, 2006 memorandum, Plaintiff had advised Ms. Hesse that he planned to file a pleading declaring his signature on the Settlement Agreement "null and void," and that the School Defendants planned to file a motion to enforce the Settlement Agreement. [Doc. #251].

The School Defendants filed a motion to enforce the Settlement Agreement on October 16, 2006, together with a memorandum and supporting affidavits and documents. [Doc. Nos. 255 & 256]. On October 18, 2006 Plaintiff filed a letter/pleading "Re: Plaintiff (Pro Se) objections to premise of the la Plata School Defense October 2, 2006 letter to the Court ("to whom it may concern").[2] In the October 18 pleading, Plaintiff essentially objects to the fact that the City of La Plata and police department Defendants were dismissed from the lawsuit; asserts that the Court's Order of August 14, 2006, denying the motion for reconsideration, is wrong; and complains of other pretrial proceedings unrelated to the mediation.

The Hearing on the Motion to Enforce the Settlement

Plaintiff does not deny that he reached an agreement with the School Defendant representatives who were present as to the terms of the settlement, nor

[2] In its Order setting the hearing, the Court noted that it does not know what October 2, 2006 letter the Plaintiff is referencing.

does he deny that the substantive provisions of the Settlement Agreement properly expresses those terms. His main objection seems to be that School Defendants who were not present at the mediation conference should not have been permitted to sign the Settlement Agreement after September 14, 2006, at 5:00 p.m. Plaintiff believes that the version of the Settlement Agreement later signed by the Defendants who were not present gives the false impression that they were at the mediation session and met "the rules of engagement," including the 5:00 p.m. deadline for reaching an agreement. He contends that the subsequent addition of their signatures "invalidated" the agreement. He further asserts that he went into the mediation session "discouraged by the Court's Order dated August 14, 2006, denying his motion for reconsideration of the grant of summary judgment to the City Defendants.

At the hearing, Mr. Ward, the Superintendent of the District since July 2004, testified that he was present at the September 14, 2006 mediation, along with the other three representatives. He testified that it was made clear to everyone present, including Plaintiff, that the School Defendants present at the session represented all the remaining School Defendants. He had been in constant communication with all of the School Defendants, other than Defendants Davis and Forcum, who lived out of town, and was authorized to reach an agreement on behalf of all the School Defendants who were not present, including Davis and Forcum. He did not consider, however, that he was authorized to actually affix their signatures to any settlement agreement. Mr. Ward testified that counsel for the School Defendants also made it clear to Plaintiff that the negotiations were on

behalf of all of the School Defendants, and Plaintiff acknowledged that he understood that Ms. Hesse and the representatives present were there on behalf of all of the School Defendants. Ms. Hesse also reiterated that they were not authorized to settle on behalf of the City of La Plata, or the police officer or any other persons who had been parties to the suit other than the School Defendants, a fact that Plaintiff also said he understood.

With regard to the mediation conference itself, Mr. Ward testified that it was a long day, and that he agreed with the notion that a 5:00 p.m. deadline be set for reaching any agreement. He testified that the parties negotiated in good faith all day and reached an agreement, which agreement was reflected in the written Settlement Agreement. After the mediation session ended, the named School Defendants who were not present were contacted and their signatures were obtained on the Settlement Agreement. He further testified that the School District is ready and able to comply with the terms of the Settlement Agreement.

Mr. Ward acknowledged that he and received the letter from Plaintiff dated September 16, 2006, which stated, among other things, that the signatures of those were not present at the mediation session would make it appear that they were "conscientious participants," when they were not. Based upon his reading of the letter, he believed that Plaintiff was acknowledging that they had a settlement agreement, and that its terms were still required to be fulfilled. With regard to the $30,000 payment, Mr. Ward testified that during the course of the settlement discussions, Plaintiff repeatedly stated that he was an educator and never wanted money from the School District, and he read Plaintiff's statements in the letter regarding the payments to be

consistent with his earlier-stated desire. Mr. Ward testified that there was no discussion at the September 20, 2006 meeting of the paragraph of Plaintiff's September 16 letter pertaining to the signing by other School Defendants.

At the hearing, Plaintiff acknowledged that he had, in fact, reached an agreement to settle this case with the School Defendants on September 14, and that he signed the written Settlement Agreement. He testified that he believed he had participated in the mediation in good faith, and that those who participated on behalf on the School Defendants participated in good faith, as well.

With regard to the School Defendants who did not attend the session, Plaintiff testified that one week prior to the mediation conference, he had received the email that advised him of the four School Defendants who would participate at the mediation conference. He also acknowledged that he understood at the mediation session that Ms. Hesse represented all of the School Defendants, including those who were not present, and that the School Defendants who were present at the meeting had the authority to settle the case on behalf of all the remaining School Defendants. He further admitted that no one had ever represented to him that any settlement might exclude any of the School Defendants. With regard to the September 16 letter, Plaintiff did not state that he intended thereby to rescind his agreement. Rather, he stated that the first three paragraphs meant that he did not expect any money, and that the paragraph pertaining to the signatures "was an idealism."

During the course of his examination of Mr. Ward, and during his own testimony, Plaintiff admitted that

an agreement had been reached between himself and the School Defendants on September 14, and he testified that he felt they had a valid and legitimate contract as of 5:00 p.m. on that day. He acknowledged that the written Settlement Agreement reflected the terms of the agreement reached, though he objected to the additional signatures by the remaining School Defendants, and that the Settlement Agreement was very similar to the draft that was given to him on August 11, 2006. Plaintiff further acknowledged that the agreement reached included a voluntary agreement to conclude the court case. He testified that the agreement reflected his will and the will of the others, and he stated that he believed the District was trying honestly to meet in the obligations of the mediation agreement.

Plaintiff also testified that he signed the agreement in a mood of discouragement and exhaustion, while acknowledging that the process was emotionally draining for everyone. He stated that he believed something illegal happened related to the Settlement Agreement when it was signed by the other School Defendants, and affirmatively stated in response to the Court's question, that he no longer wished to settle the case under the terms set forth in the Settlement Agreement.

DISCUSSION

This Court has the inherent power to enforce a settlement agreement entered into by the parties in a pending case. Settlement agreements are favored by the courts. Caleshu v. Merill Lynch, Pierce, Fenner & Smith, Inc., 737 F. Supp. 1070, 1086 (E.D. Mo 1990), aff'd, 985 F.2d 564 (8th Cir. 1991). Settlement

agreements are governed by "basic contract principles." Sheng v. Starkey Labs., Inc., 117 F.3d 1081, 1083 (8th Cir. 1997) (declining to determine whether state or federal common law controlled a Title VII settlement agreement, as both sources of law resulted in same outcome); Kenner v. City of Richmond Heights, Mo., 356 F. Supp. 2d 1002, 1007-08 (E.D. Mo. 2005), aff'd, 2006 WL 2620654 (8th Cir. Sept. 14, 2006). In order for a settlement agreement to be enforceable, the parties must have reached agreement on the essential terms of the deal. Sheng, 117 F3d at 1083. Even if the parties have left some details for counsel to work out through further negotiation, a legal, valid settlement agreement still exists. Id. at 1083. The party requesting enforcement of a settlement agreement has the burden of proving its claim for relief by clear, convincing, and satisfactory evidence. Kenner, 356 F. Supp. 2d at 1008.

> Once parties have settled a dispute and have agreed to settlement terms, the parties cannot rescind it. In order to determine whether the parties intended to be bound by the settlement prior to the execution of the written documents, a court must consider the course of negotiations, agreement on material terms, whether the parties described the settlement as such, and whether any existing disagreements were merely technicalities.

Caleshu, 737 F. Supp. At 1086.

The terms of the settlement agreement at issue in the present case are complete and unambiguous. In fact, Plaintiff takes no issue with the substantive terms of the agreement. Rather, his complaint is that individuals who were not at the mediation session, and not under the time pressure to sign the document by

5:00 p.m. that day, should not have later signed the written Settlement Agreement.

The Court concludes that Plaintiff and the School Defendants reached an enforceable agreement on September 14, 2006, and that the terms of the agreement are as set forth in the written Settlement Agreement. All parties to the mediation – including Plaintiff – were aware both prior to and at the time of the mediation conference that four of the Defendants would be representing the School Defendants. At no time prior to reaching an agreement did Plaintiff voice any objection to proceeding in that fashion. The representatives present were fully authorized to reach an agreement with respect to all of the School Defendants, and Plaintiff clearly understood that the terms of the agreement reached pertained to all of the School Defendants.

The Court further concludes that the addition to the written Settlement Agreement of the signatures of Defendants not present at the mediation session does not invalidate the agreement reached between plaintiff and the School Defendants. The Court concludes from all of the evidence and testimony that the rules the parties set for the mediation conference did not require that all parties physically sign the Settlement Agreement by 5:00 p.m., but rather that the parties reach an agreement by 5:00 p.m., which agreement would be memorialized by the written Settlement Agreement signed by all parties who were present. This requirement was in no way violated. Further, from a legal perspective, it would be both natural and expected that all parties to the agreement would sign the final Settlement and release.

Plaintiff's concern that the signatures of the not-present School Defendants implies some participation on their part – a concern for which the Court sees little basis – neither affects the validity of the Settlement Agreement nor justifies Plaintiff repudiating the terms to which he unequivocally agreed. Clearly Plaintiff cannot claim surprise. He knew well in advance of the mediation conference that four individuals and their counsel would represent the School Defendants. He also knew that any settlement would have to be reviewed and approved by the School Board following the mediation conference. The document he signed had signature lines and dates for all of the School Defendants, including those not present, and Ms. Hesse specifically advised Plaintiff that she would be obtaining the signatures of others and sending the fully executed agreement to him. Nevertheless, Plaintiff expressed no objection to the anticipated signatures of others until two days after the mediation was concluded, and did so in a letter that affirmed, rather than repudiated, that an agreement had been reached. Plaintiff cannot now disavow the agreement he reached simply because he does not like the fact that the fully-executed document may somehow imply "conscientious participation" by the non-resent School Defendants, or because of any continuing ill feeling he may have toward some of the individual School Defendants.

Further, that Plaintiff was "discouraged" by the Court's August 14, 2006, Order, declining to reconsider the Order granting summary judgment to the City and Officer Woolfolk, also fails to provide any basis for disregarding the terms of the Settlement Agreement. In this regard, the Court notes that its Order denying reconsideration was issued a full thirty days prior to the

mediation conference. Thereafter, on September 6 – weeks after the Order was issued – Plaintiff expressly confirmed to the Court that he was willing to negotiate in good faith with the School Defendants, even though no other parties originally named by Plaintiff would be a party to discussions. He confirmed his commitment to negotiate in good faith in the Mediation Confidentiality Agreement that he signed at the start of the mediation conference. Def. Ex. 1. Plaintiff's discontent with the Court's disposition as to other parties to the litigation does not serve as a basis for disregarding the agreement that he reached with the School Defendants.

Nor does Plaintiff's pro se status relieve him from complying with the terms of an agreement which knowingly and voluntarily reached. Plaintiff is a 61 year old adult with a Masters in Education, who was a high school science teacher. At the time he signed the Settlement Agreement, he was not under the influence of any drugs, alcohol or other substances that might have impaired his thinking. The Court also notes that the mediation was conducted by an extremely experienced mediator, and that this was Plaintiff's second mediation conference, the first having taken place while Plaintiff was represented by counsel. Nor is the Court persuaded by any claim of undue pressure. While the actual mediation conference took place in one day, with a requirement that any agreement be reached and executed by those present by 5:00 p.m., the discussions leading up to the mediation conference took place over more than one month. Plaintiff also had received a proposed draft, very similar to the final terms reached, on August 11, 2006, and therefore had more than one month to consider the terms. Plaintiff

knowingly and voluntarily agreed to the terms of the Settlement Agreement, and he is bound by the agreement reached.

In their motion to enforce the Settlement Agreement, the School Defendants have requested attorneys' fees and costs associated with the filing of their motion. The Court believes the request is well-founded. Neither Plaintiff's unhappiness that others were permitted to sign after 5:00 p.m. nor his concern that such signatures will imply "participation" justifies Plaintiff's repudiation of the agreement he knowingly and voluntarily reached. And his current unfounded actions have unquestionably caused Defendants to incur significant additional expenses. Because of Plaintiff's pro se status, his lack of knowledge of the law, and his prior representation to the Court that he did not feel he could incur the costs associated with the appointment of a second mediator, the Court will limit the award to a nominal amount, which amount may be deducted from the first installment of the $30,000 payment to be made under the Settlement Agreement.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion to enforce their Settlement Agreement with Plaintiff Todd McClaskey is GRANTED. [Doc. #255].

IT IS FURTHER ORDERED that the School Defendants shall comply with the terms of the Settlement Agreement dated September 14, 2006. [Def. Ex. 2]. Pursuant to the terms of the Settlement Agreement, the claims of Plaintiff against Defendants La Plata R-II School District (the "School District"), Michelle Travis, William Thompson, Carl Hagar, Richard Burns, Becky Furman, Randy L. Baker,

Michael Kimmel, Richard Forcum, and Steve Davis are hereby DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the School Defendants' request for fees and costs incurred in connection with their motion to enforce the settlement agreement is GRANTED in the amount of $250, which amount may be deducted from the first installment of the $30,000 amount due Plaintiff under the Settlement Agreement.

As all claims against all parties have now been resolved, a separate Judgment shall accompany this Memorandum and Order.

AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE

Dated this 7th day of November, 2006.

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(2)

Supreme Court, U.S.
FILED
NOV 28 2008
OFFICE OF THE CLERK

No. 07-1430

IN THE

Supreme Court of the United States

Todd McClaskey, et al.

Petitioner,

v.

La Plata R-II School, et al.

Respondents,

On Petition for Rehearing

Todd McClaskey (Pro Se)
14925 State Hwy 3
La Plata, Missouri 63549
(660) 332-7797

CERTIFICATE OF COMPLIANCE

No. 07-1430

Todd McClaskey, *et al.*

Petitioner,

v.

La Plata R-II School, *et al.*

Respondents,

As required by Supreme Court Rule 44, this is to certify that this **Petition for Rehearing** is presented in good faith and not for delay. The grounds for this are limited to intervening circumstances of substantial and controlling effect.

As required by Supreme Court Rule 33.1 (h), I certify the petition for Review contains 900 words, excluding the parts of the petition that are exempted by the supreme Court Rule 33.1 (d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 11, 2008 Petitioner

Respectfully Submitted,

T. J. McClaskey

Petition for Rehearing

Case # **07-1430**

Grounds for this Petition are;

The last entry to the United States District Court, Eastern District of Missouri, Northern Division District Court's Memorandum and Order, November 7, 2006, stated;

> "IT IS HEREBY ORDERED that the School Defendants shall comply with the terms of the Settlement Agreement dated September 14, 2006. (Def. Ex. 2)".

Defendants have not complied with that Court Order to date.

The Mediator filed an ADR Compliance Report on September 15, 2006, the day after closing the Settlement Agreement, September 14, 2006.

Notwithstanding that ADR Report and the negotiated deadline date for closure (September 14, 2006), Defense changed pages of the closed contract and continued adding signatures for two weeks after the ADR Report, thus denying rules of closure concluded in negotiations.

Dismissed by Defense and Courts herewith are the "good faith" benefits of the Mediation Confidentiality Agreement, not to misrepresent anything in processes.

The date of closing is at the top of the contract. The page numbers are at the bottom of the contract (except for the "#4" deleted from that last page before closing as a way of adding pages and signatures almost two weeks after the ADR Report). Those are provisions

of the Settlement and the Mediation Confidentiality Agreements.

Defense violated the third paragraph of the contract (which is a provision);

> **"parties desire to resolve all matters/incidents that gave rise to (these) causes of action".**

The test of that "desire" was the Mediation Confidentiality Agreement for "good faith" (not to misrepresent anything).

"Incidents that gave rise to causes of action" are Defendant's violations of its rules (Regulation 2130 and 1480), forever now associated with practices of denying closing rules in "settlement".

Along with the above, the following provisions of that Settlement Agreement, to date, have not been "fulfilled" by the Defendants in spite of the District Court's November 7, 2006 Order to "comply with the terms";

1. Defendants have breached clause #1;

> "School Defendants will issue letters..setting forth their reflections on the incidents that gave rise to the Action."

Defendants produced only two out of nine defendant's letters (Becky Furman, and Bill Thompson). There was never an agreement in negotiations or the contract that the present school board would produce a "letter" thereby fulfilling the plural interpretation of "letters". I anticipated, from negotiations, seeing Defendant(s) individual written views as to "incidents that gave rise to the Action".

2. #2 clause was breached in that Plaintiff Sara was never invited.

3. #5 clause was breached; the provision for $1,000 for emotional counseling, was requested in my letter dated September 16, 2006. Defendant school auditor was purported to advise the school to send that money directly to Plaintiff in compliance with the contract. That transfer, as recommended by the school auditor, and by contract, and by District Court Order, November 7, 2006 (as a final decree), never happened.

4. #6 is breached same as above. The court has ordered, November 7, 2006, the $30,000 compliance by the District. To date, over two years, that remains breached.

5. #12 clause has been breached in that State and Federal Constitution are violated when closing agreements were violated by Defense and six of nine Defendants.

6. #13 and #14 have been violated in that the "good faith" provisions of the Mediation Agreement are misrepresented.

Supreme Court Rule 44.1 establishes the ground rule for this instant action with this court, which states;

> "The petition shall be presented ...in good faith.."

This concept was also described in the Mediation Confidentiality Agreement as;

> **(1)"Good Faith"; ...Participants ...will not convey information that is intentionally misleading or false.."**

Courts have not determined by their judgment whether there is any conflict with the manner of Defense' closing practices well after the ADR Compliance Report was filed on September 15, 2006.

Courts argue that all issues for disposing of this case

are settled. Court argument is that Plaintiff's November 24,

2006 "Notice of Appeal" is the basis of what limited all Courts jurisdiction for review to only "settlement" issues. But Plaintiff's actual "Notice of Appeal" came a full four months before that November "notice". It seems incumbent on the District Court to have acknowledged that first Notice of Appeal in July, 2006, not November.

Grounds for review are warranted because the District Court cut off legal representation to this Petitioner in pre-trial at the point in time the Court instructed Plaintiff to rewrite his sworn Affidavit to pre-trial (as was submitted to court by appointed attorney). That court requirement affected pre-trial evidence, to dispose of it with the Court's pre-planned disposal of certain Defendants. That practice is grounds for review because Plaintiff was denied legal representation when public money was being used by the Defense legal team in violation of the Defendant School Liability Contract, which clearly denies that funding based on Human Rights Investigation Conclusion of violation by School Defendants, (all matters of settlement and contract). Those practices by court rendered Plaintiff unrepresented, thereby disposing of evidence for Complaints, giving Defense and Defendants advantage while clearing Petitioner Complaints from the books.

Petitioner motions this court to review who is acting by the "rules" in closing processes, and if benefits of closing settlement agreements have been denied to Petitioner family.

Respectfully Submitted.

Petitioner

November 11, 2008